

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

NUMBER: 499-737

DIVISION: D

J. ROBERT WOOLEY, AS  
ACTING COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA

VERSUS

AMCARE HEALTH PLANS OF LOUISIANA, INC.

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

**MOTION AND INCORPORATED MEMORANDUM REQUESTING APPROVAL  
OF SETTLEMENT OF CLAIMS INVOLVING  
PROSKAUER ROSE, LLP AND STUART L. ROSOW**

NOW INTO COURT through undersigned counsel comes J. Robert Wooley, Commissioner of Insurance for the State of Louisiana in his capacity as Liquidator of AmCare Health Plans of Louisiana, Inc. In Liquidation ("AmCare-LA") through Marlon V. Harrison, Receiver for AmCare Health Plans of Louisiana, Inc. in Liquidation (the "Receiver") who respectfully represents that:

1.

Am Care Health Plans of Louisiana, Inc. was a health maintenance organization that was placed by order of this honorable Court in rehabilitation on October 27, 2002 and in liquidation on November 12, 2002, and the Receiver was appointed by the Court pursuant to those orders.

2.

The order of liquidation for AmCare-La entered by this Court on November 12, 2002 authorized the Receiver, inter alia, to commence whatever legal actions were necessary, and to collect all sums and debts that were economically feasible to collect, to accomplish the liquidation of AmCare-LA.

3.

In furtherance of the order of liquidation, the Receiver filed an action against Proskauer Rose, LLP ("Proskauer") and Stuart L. Rosow ("Rosow"), and others, in this Court, case number 499-737, as amended and restated as to the claims asserted.

4.

AmCare Health Plans of Texas, Inc. In Receivership ("Amcare-TX"), and AmCare Management, Inc. In Receivership ("AmCare-Mgt"), both of which are in receivership and under the supervision

of the courts of the State of Texas, and AmCare Health Plans of Oklahoma, Inc. In Receivership ("AmCare-OK"), which is in receivership and under the supervision of the courts of the State of Oklahoma, (all collectively referred to as the "AmCare Entities"), intervened in case number 499,737 to join AmCare-LA in asserting claims against Proskauer and Rosow.

5.

Proskauer was the law firm for the various AmCare Entities and Rosow was a lawyer in that firm. Proskauer and Rosow were instrumental in the sale of the AmCare Entities to AmcareCo, Inc. and in providing legal services to the AmCare Entities.

6.

In connection with the proposed settlement of the claims asserted on behalf of AmCare-LA and the AmCare Entities against Proskauer and Rosow, Proskauer and Rosow have denied the allegations made in the pending actions but are willing to enter into a settlement agreement to avoid the time and expense of protracted litigation involving complex business transactions and legal representation.

7.

In connection with the proposed settlement, Proskauer and Rosow have agreed to pay AmCare-LA and the AmCare Entities, collectively, the full and true sum of One Million (\$1,000,000.00) Dollars, a portion of which is to be paid to AmCare-LA in accordance with the terms of the Receiver's Agreement previously approved by this Court. A copy of the proposed settlement agreement (the "Settlement Agreement") is attached hereto and marked as **Exhibit A**.

8.

The Receiver believes that the proposed settlement is in the best interest of the AmCare-LA estate, will efficiently marshal the property and assets of the AmCare-LA estate, and will further the goals identified in the order of liquidation entered by this Court in this matter.

9.

The Receiver submits to the Court that the terms of the Settlement Agreement constitute a fair and reasonable settlement of the claims asserted by the AmCare Entities, that the funds received pursuant to the Settlement Agreement will be used by AmCare-LA in accordance with procedures utilized in this proceeding, as well as for attorneys fees and costs and related expenses arising out of the pending lawsuit filed against Proskauer and Rosow, that the settlement is intended to resolve all

claims against Proskauer and Rosow, and that the settlement terms, under all applicable circumstances, are in the best interests of the creditors and other persons affected by the settlement and the liquidation of AmCare-LA through these proceedings.

10.

Pursuant to the terms of the Settlement Agreement, the Receiver desires and is entitled to an order of this Court finding that the settlement is fair and equitable to all interested parties and claimants (including all creditors of AmCare LA); that the Receiver has specific authority to release all claims pursuant to the terms of the Settlement Agreement and to dismiss the claims asserted against Proskauer and Rosow in the pending lawsuit with prejudice; that the Receiver has specific authority to execute the Settlement Agreement; and that all creditors, claimants, and interested persons of AmCare-LA are and will be bound by the Settlement Agreement.

11.

The Receiver further requests notice of this motion and order and the Court's ruling be given by posting a copy of this motion and order and the Court's ruling on the Louisiana Department of Insurance website at [www.ildi.la.gov](http://www.ildi.la.gov) ; Office Directory; Receivership; Domestic Receivers in receivership-Open; AmCare Health Plans of Louisiana; Receivership Pleadings and that such be deemed sufficient notice to all interested persons or entities.

12.

The Receiver requests that the judgment rendered as to the proposed settlement be certified as a final judgment for purposes of appeal by this Court for the reasons that the judgment as prayed for will dismiss all claims of AmCare-LA against Proskauer and Rosow with prejudice and there is no just reason for delay since Proskauer and Rosow will no longer be a party to the recovery actions in accordance with Louisiana Code of Civil Procedure article 1915.

WHEREFORE, Marlon V. Harrison, Receiver for AmCare Health Plans of Louisiana, Inc. in Liquidation, prays that this motion be deemed good and sufficient and that this honorable Court approve the proposed settlement with Proskauer and Rosow and authorize the Receiver to enter into the proposed agreement with the Proskauer and Rosow and the AmCare entities, as reflected in **Exhibit A**, and to sign such documents, to take such actions as may be required to accomplish same, and to implement same, in the sole discretion of the Receiver; that the Court make a finding that (1) the settlement is fair and equitable to all interested parties and claimants (including all creditors of

AmCare-LA); (2) that the Receiver has specific authority to release all claims pursuant to the terms of the Settlement Agreement and to dismiss the claims asserted against Proskauer and Rosow in the pending lawsuit with prejudice; (3) that the Receiver has specific authority to execute the Settlement Agreement; and (4) that all creditors, claimants, and interested persons of AmCare-LA are and will be bound by the Settlement Agreement, that notice of this motion and order and the Court's ruling be given by posting a copy of this motion and order and the Court's ruling on the Louisiana Department of Insurance website at [www.lds.la.gov](http://www.lds.la.gov) ; Office Directory; Receivership; Domestic Receivers in receivership-Open; AmCare Health Plans of Louisiana; Receivership Pleadings and that such be deemed sufficient notice to all interested persons or entities, and the judgment rendered as to the proposed settlement be certified as a final judgment for purposes of appeal by this Court for the reasons that the judgment as prayed for will dismiss all claims of AmCare-LA against Proskauer and Rosow with prejudice and there is no just reason for delay since Proskauer and Rosow will no longer be a party to the recovery actions in accordance with Louisiana Code of Civil Procedure article 1915, and for all other appropriate relief.

RESPECTFULLY SUBMITTED,

BY ATTORNEYS FOR  
J. Robert Wooley  
Commissioner of Insurance  
for the State of Louisiana  
in his capacity as Liquidator of  
AmCare Health Plans of Louisiana, Inc.

Buser & Associates, APLC

BY: 

Sue Buser #18151  
1518 Highway 30 East  
Gonzales, LA 70737  
Telephone: (225) 644-6100  
Fax: (225) 644-6111

NINETEENTH JUDICIAL DISTRICT COURT  
PARISH OF EAST BATON ROUGE  
STATE OF LOUISIANA

NUMBER: 499-737

DIVISION: D

J. ROBERT WOOLEY, AS  
ACTING COMMISSIONER OF INSURANCE  
FOR THE STATE OF LOUISIANA  
VERSUS  
AMCARE HEALTH PLANS OF LOUISIANA, INC.

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK**ORDER**

Considering the foregoing Motion and Incorporated Memorandum Requesting Approval of Settlement of the Claims of Proskauer Rose, LLP and Stuart L. Rosow filed on behalf of AmCare Health Plans of Louisiana, Inc. In Liquidation, and the Court finding that the parties are entitled to the relief granted:

**IT IS ORDERED, ADJUDGED AND DECREED** that the Motion Requesting Approval of Settlement of the Claims of Proskauer Rose, LLP and Stuart L. Rosow be and hereby is GRANTED.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the proposed settlement with Proskauer Rose, LLP and Stuart L. Rosow be and hereby is APPROVED.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Receiver for AmCare Health Plans of Louisiana, Inc. In Liquidation be and hereby is authorized to enter into the proposed settlement agreement with the Proskauer Rose, LLP and Stuart L. Rosow, and AmCare Health Plans of Texas, Inc. In Receivership, AmCare Management, Inc. In Receivership, and AmCare Health Plans of Oklahoma, Inc. In Receivership, as reflected in the proposed agreement attached as **Exhibit A**, and to sign such documents, to take such actions as may be required to accomplish same, and to implement same, in the sole discretion of the Receiver.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the settlement is fair and equitable to all interested parties and claimants (including all creditors of AmCare-LA); that the Receiver has specific authority to release all claims pursuant to the terms of the Settlement Agreement and to dismiss the claims asserted against Proskauer and Rosow in the pending lawsuit with prejudice; that the Receiver has specific authority to execute the Settlement Agreement; and that all creditors, claimants, and interested persons of AmCare-LA are and will be bound by the

Settlement Agreement.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that notice of this motion and order and the Court's ruling be given by posting a copy of this motion and order and the Court's ruling on the Louisiana Department of Insurance website at [www.lidi.la.gov](http://www.lidi.la.gov) : Office Directory; Receivership; Domestic Receivers in receivership-Open; AmCare Health Plans of Louisiana; Receivership Pleadings and that such notice shall be deemed sufficient notice to all interested persons or entities.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the motion of the Receiver to certify this judgment as a final judgment pursuant to Louisiana Code of Civil Procedure article 1915 be and hereby is granted and this judgment is certified as a final judgment for purposes of appeal.

The Court, in accordance with Louisiana Civil Code Article 1915, designates this as a final judgment by the Court after an express determination that there is no just reason for delay since the judgment rendered by the Court herein dismisses all claims in the recovery actions as to Proskauer Rose and Stuart L. Rosow with prejudice.

THUS DONE AND SIGNED this 24 day of June, 2005 at

Baton Rouge, Louisiana.

19th JUDICIAL DISTRICT  
EAST BATON ROUGE PARISH, LA  
FILED

JUN 24 AM 9:12

DEPUTY CLERK & RECORDER FOR  
DOUG W. BORN  
CLERK OF COURT, EAST BATON ROUGE PARISH

*James Clark*  
JUDGE, NINETEENTH JUDICIAL DISTRICT COURT

I hereby certify that on this day a notice of the above judgement was mailed by me, with sufficient postage affixed, to: All Parties

Done and signed on 6-27-05

*Shirley A. Johnson*  
Deputy Clerk of Court

CERTIFIED  
TRUE COPY

JUN 27 2005

BY *Shirley A. Johnson*  
DEPUTY CLERK

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a copy of the above and foregoing document has been forwarded via First Class Mail, postage prepaid and properly addressed, to the following:

Harry J. Philips, Jr.  
Robert W. Barton  
Taylor Porter Brooks & Philips  
P.O. Box 2471  
Baton Rouge, LA 70821-2471

Robert J. Burns, Jr.  
Perry, Atkinson, Balhoff, Mengis  
& Burns, LLC  
P.O. Box 83260  
Baton Rouge, LA 70884-3260

Wendell Clark  
Patrick Seiter  
Adams & Reese  
North Tower, 19<sup>th</sup> Floor  
451 Florida Street  
Baton Rouge, LA 70801

V. Thomas Clark, Jr.  
Crawford Lewis  
1600 Bank One Centre, North Tower  
450 Laurel Street  
P.O. Box 3656, 70821-3656  
Baton Rouge, LA 70801

Kelsey Kornick Funes  
Phelps Dunbar  
City Plaza  
445 North Blvd., Suite 701  
Baton Rouge, LA 70802

David L. Guerry  
Long Law Firm  
4041 Essen Lane, Suite 500  
Baton Rouge, LA 70809-7319

David H. Topol  
Wiley Rein & Fielding, LLP  
1776 K Street NW  
Washington, DC 20006

George B. Hall  
Phelps Dunbar  
365 Canal Street, Suite 2000  
New Orleans, LA 70130

James C. Percy  
Jones, Walker, Waechter, Poitevent,  
Carrere & Denegre, L.L.P.  
United Plaza Boulevard  
Four United Plaza, Fifth Floor  
Baton Rouge, LA 70809-7000

Merril Hirsh  
Ross, Dixon & Bell  
2001 K Street NW  
Washington, DC 20006-1040

Claude F. Reynaud, Jr.  
Jeanne C. Comeaux  
Breazeale, Sachse & Wilson  
P.O. Box 3197  
Baton Rouge, LA 70821-3197

Mary Olive Pierson  
Attorney at Law  
8702 Jefferson Highway, Suite B  
P.O. Box 14647  
Baton Rouge, LA 70898-4647

Joseph J. McKernan  
Gordon McKernan  
McKernan Law Firm  
8710 Jefferson Highway  
Baton Rouge, LA 70809

Kimberly S. Morgan  
Morgan Law Firm  
9456 Jefferson Highway, Suite D  
Baton Rouge, Louisiana 70809-2627

Guy M. Hohmann  
T. Wade Jeffries  
Hohmann, Taube & Summers, L.L.P.  
100 Congress Avenue, Suite 1600  
Austin, Texas 78701

Keary L. Everitt, Esq. (#1353)  
Special Assistant Attorney General  
Everitt, Pratt, Latham & Donovan, LLP  
1010 Common Street, Suite 2500  
New Orleans, Louisiana 70112

Robert B. Bieck, Jr., Esq.  
Jones, Walker, Waechter, Poitevent, Carrere  
& Denegre, LLP.  
201 St. Charles Avenue  
New Orleans, Louisiana 70170-5100

Edward J. Walters, Esq.  
J. E. Cullens, Jr., Esq.  
Moore, Walters, Thompson,  
Papillion & Cullens  
6513 Perkins Road  
Baton Rouge, Louisiana 70808

Jonathan C. Augustine, Esq.  
Middleberg, Riddle & Gianna  
Bank One Centre, North Tower  
450 Laurel Street, Suite 1101  
Baton Rouge, Louisiana 70801

Arlene Knighten  
Louisiana Department of Insurance  
1702 N. Third Street  
Baton Rouge, LA 70802

William C. Kaufman, III  
Seale, Smith, Zuber & Barnette  
8550 United Plaza Boulevard  
Suite 200  
Baton Rouge, LA 70809

Douglas Dodds  
Amy Clark-Meachum  
Pat Lochridge  
McGinnis Lochridge & Kilgore  
1300 Capital Center  
919 Congress Avenue  
Austin, TX 78701

on this 24<sup>th</sup> day of June, 2005.

R. James George, Jr.  
Gary L. Lewis  
George & Brothers  
114 W. Seventh Street, Suite 1100  
Austin, TX 78707

A handwritten signature in dark ink, appearing to read "G. Lewis", written over a horizontal line.



## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into on \_\_\_\_\_, 2005, by and between Mike Geeslin, Receiver, and Jean Johnson, Special Deputy Receiver of AmCare Health Plans of Texas, Inc. and AmCare Management, Inc. (collectively, "Johnson"), Kim Holland, Receiver of AmCare Health Plans of Oklahoma, Inc. ("Holland") and J. Robert Wooley, Commissioner of Insurance for the State of Louisiana, as Liquidator of AmCare Health Plans of Louisiana, Inc. ("Wooley") (collectively, "plaintiffs"), on the one hand, and Proskauer Rose LLP and Stuart L. Rosow (collectively, "Proskauer") on the other hand.

### A. RECITALS

1. Plaintiffs and Proskauer are currently engaged in litigation in matters styled as follows (collectively, the "Lawsuits"):

- Cause No. GN303897; *Jean Johnson, Special Deputy Receiver of AmCare Health Plans of Texas, Inc. et al. v. Price Waterhouse Coopers, L.L.P., et al.*; 250<sup>th</sup> Judicial District In the District Court of Travis County, Texas (the "Texas Lawsuit")
- *Robert Wooley, as Commissioner of Insurance for the State of Louisiana (as liquidator of AmCare Health Plans of Louisiana, Inc., in liquidation) v. Thomas S. Lucksinger, et al.*, No. 499,737 Section "D," 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, Louisiana  
Consolidated With:  
*J. Robert Wooley, as Commissioner of Insurance for the State of Louisiana (as liquidator of AmCare Health Plans of Louisiana, Inc., in liquidation) v. Foundation Health Corporation, et al.*, No. 509,297 Section "D," 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, Louisiana  
Consolidated With:  
*J. Robert Wooley, as Commissioner of Insurance for the State of Louisiana (as liquidator of AmCare Health Plans of Louisiana, Inc., in liquidation) v. PriceWaterhouseCoopers, LLP*, No. 512,366 Section "D," 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, Louisiana (the "Louisiana Lawsuit")

2. In the Lawsuits, Plaintiffs have asserted claims of fraud, conspiracy and aiding and abetting, negligence, gross negligence, negligent misrepresentation, failure to disclose, legal

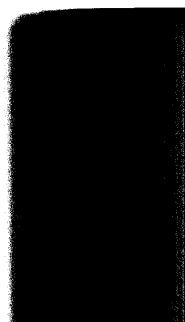


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malpractice, violation of various Insurance Code provisions, and breach of fiduciary duty. For relief, Plaintiffs seek actual damages, prejudgment interest, exemplary damages, attorneys' fees, expert witness fees, and costs.

3. Johnson brought her claims against Proskauer in the Lawsuits on behalf of AmCare Health Plans of Texas, Inc. in Receivership ("AmCare-TX"), AmCare Management, Inc. in Receivership ("AmCare Management"), the claimants who assigned their claims to Johnson, and other creditors of AmCare-TX and AmCare Management; Holland brought her claims against Proskauer in the Lawsuits on behalf of AmCare Health Plans of Oklahoma, Inc. in Receivership ("AmCare-OK"), its policyholders, creditors, and/or other interested persons; and Wooley brought his claims against Proskauer in the Louisiana Lawsuit on behalf of AmCare Health Plans of Louisiana, Inc. in Liquidation ("AmCare-LA"), its policyholders, members, and creditors. AmCare-OK, AmCare-TX, AmCare-LA, and AmCare Management are hereinafter referred to as the "AmCare HMOs.") Johnson represents and warrants that she has authority to prosecute and settle the claims she has asserted or could have asserted (including creditors' claims) against Proskauer. Holland represents and warrants that she has authority to prosecute and settle the claims she has asserted or could have asserted (including creditors' claims) against Proskauer. Wooley represents and warrants that he has authority to prosecute and settle the claims he has asserted or could have asserted (including creditors' claims) against Proskauer.

4. Proskauer has denied Plaintiffs' various allegations and asserted affirmative defenses to Plaintiffs' claims for relief. Proskauer continues to deny any wrongdoing and does not concede any liability in connection with any claims alleged against it in the Lawsuits. Proskauer believes that (i) it competently provided legal services to AmCareCo, Inc. and M. Lee Pearce; (ii) it fulfilled all fiduciary obligations that it owed; (iii) it violated no duties to Plaintiffs or anyone Plaintiffs purport to represent; (iv) it at all times complied with all legal and ethical obligations; (v) its



conduct caused no harm to any of the Plaintiffs or anyone Plaintiffs purport to represent; (vi) it neither participated in nor aided – in any way, shape, or form – the commission of any fraudulent act or breach of fiduciary duty.

5. Neither Plaintiffs nor Proskauer admit the claims or contentions of the other. Nevertheless, the Plaintiffs and Proskauer have determined that it would be in their respective best interests to settle the claims, disputes, and causes of action pending in the Lawsuits, or that could have been brought in the Lawsuits, as well as all other claims and disputes that might exist between them, to avoid the time, expense and uncertainty of continued litigation. Plaintiffs acknowledge that Proskauer does not admit any liability or wrongdoing whatsoever, that Proskauer is entering into this Agreement solely to rid itself of this litigation and to buy peace and that this Agreement shall never be construed as an admission of liability, fault, or wrongdoing. The purpose of this Agreement is to memorialize their agreement in writing.

#### **B. AGREEMENT**

In consideration of the mutual covenants, warranties, and representations made in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties agree and bind themselves, subject to approval of the Plaintiffs' respective receivership courts, as follows:

##### **1. Definitions**

In addition to terms defined elsewhere in this Agreement, the following defined terms are used herein:

**a. Agreement.** "Agreement" means this Settlement Agreement and Release together with all exhibits hereto.

**b. Parties and Party.** "Parties" means all the parties to this Agreement, and "Party" refers to any of them.

c. **Person.** "Person" means a natural person, individual, corporation, partnership, limited partnership, association, joint venture, joint stock company, estate, legal representative, trusts, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their spouses, heirs, predecessors, successors, representatives, or assignees.

d. **Plaintiffs' Affiliates.** "Plaintiffs' Affiliates" means, both individually and collectively, the AmCare HMOs, AmCare Management, and plaintiffs, as defined above, their successors and assigns, and their respective policyholders, providers, members, creditors, and representatives of any or all of the foregoing. "Plaintiffs' Affiliates" expressly includes all persons for whose benefit the Lawsuits were brought (including, without limitation, the creditors, policyholders, providers, and members, of the AmCare-HMOs, or any of them, along with all Persons who assigned claims to any of the AmCare-HMOs). "Plaintiffs' Affiliates" expressly excludes Health Net, Inc., its predecessors, successors, and assigns (other than the ones delineated in this paragraph).

e. **Plaintiffs' Counsel.** "Plaintiffs' Counsel" means George & Brothers, LLP; Hohmann, Taube & Summers, LLP; Wisener, Nunnally, Gold, LLP; McKernan Law Firm; Moore, Walter, Thompson, Thomas, Papillion & Cullens; and The Morgan Law Firm.

f. **Proskauer's Affiliates.** "Proskauer's Affiliates" means Proskauer Rose LLP (as defined above to include Stuart L. Rosow) and any predecessors, successors, and assigns, and its respective past and present partners, insurers, co-insurers, reinsurers, agents, employees, attorneys, representatives, and all other related and affiliated persons, firms, partnerships, and entities, and the immediate family members, legal representatives, heirs, successors in interest or assigns of any of the foregoing.

g. **Proskauer's Counsel.** "Proskauer's Counsel" means McGinnis, Lochridge & Kilgore, LLP, and Breazeale, Sachse & Wilson, LLP.

2. **Settlement Consideration**

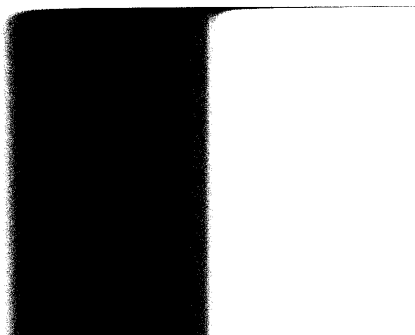
Proskauer shall pay Plaintiffs jointly the total sum of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) (the "Settlement Proceeds") as further set forth below.

3. **Allocation of Settlement Consideration Between and Among Plaintiffs**

The consideration provided for in Paragraph 2 above shall be made and allocated to and among the Plaintiffs as determined among themselves or their respective receivership courts. Once the Settlement Proceeds have been paid, neither Proskauer nor Proskauer's Affiliates shall have any further liability or responsibility whatsoever with respect to such payment. Any disagreements or disputes concerning the allocation or division of such payment between or among the Plaintiffs, Plaintiffs' Affiliates and/or Plaintiffs' Counsel that may arise shall be resolved solely by and among these Persons. The Plaintiffs, and each of them, agree to indemnify and hold Proskauer and Proskauer's Affiliates harmless from any liability or expense that might arise in connection with any such disputes.

4. **Release and Covenant Not to Sue**

a. **Plaintiffs' Release of Claims.** Plaintiffs and Plaintiffs' Affiliates, individually and collectively, hereby expressly agree that neither they nor any persons claiming through them or on their behalf shall now or hereafter institute, maintain, or assert against Proskauer or Proskauer's Affiliates, either directly or indirectly, on their own behalf or on behalf of any other Person, any lawsuit or other legal or equitable action of any sort, and that they forever release and discharge Proskauer from any and all causes of action, claims, damages, liabilities, penalties, equitable, legal and administrative relief, interest, demands or rights, known or unknown, whether based on federal, state or local statute, ordinance, regulation, contract, common law or any other source, that have



been, could have been, may be or could be alleged or asserted now or in the future by any of the Plaintiffs or Plaintiffs' Affiliates against any of Proskauer in the Lawsuits or any other court action or before any administrative body, tribunal, arbitration panel, or other adjudicatory body on the basis of, connected with, arising out of, or relating to, in whole or in part, any of the following:

(i) any and all of the acts, omissions, nondisclosures, facts, matters, transactions, occurrences, or representations that have been, could have been, may be or could be directly or indirectly alleged, asserted, described, set forth, or referred to in the Texas Lawsuit;

(ii) any and all of the acts, omissions, nondisclosures, facts, matters, transactions, occurrences, or representations that have been, could have been, may be or could be directly or indirectly alleged, asserted, described, set forth, or referred to in the Louisiana Lawsuit;

(iii) any and all of the acts, omissions, nondisclosures, facts, matters, transactions, occurrences, or representations allegedly made in connection with or directly or indirectly relating to any representation by Proskauer of Plaintiffs, Plaintiffs' Affiliates or Dr. M. Lee Pearce. Nothing in this settlement is intended to be a release of any claim Dr. M. Lee Pearce independently may have against Proskauer.

(iv) any and all acts, omissions, nondisclosures, facts, matters, transactions, occurrences, or representations that are related or arising out of, directly or indirectly, any relationship with Proskauer or any formation, capitalization, business, operations, insolvency or matter of any kind at all related to AmCareCo Inc. or the AmCareCo HMOs. Nothing in this settlement is intended to be a release of any claim AmCareCo, Inc. independently may have against Proskauer.

(v) any other act, omission, nondisclosure, fact, matter, transaction, occurrence, or representation occurring prior to the date hereof.

(vi) any and all claims for attorneys' fees, costs or disbursements incurred by Plaintiffs' Counsel or any other counsel representing Plaintiffs, Plaintiffs' Affiliates, or any of them, in connection with or relating in any manner to either or both of the Lawsuits, the settlement of the Lawsuits, the administration of such settlement, or the allocation or disbursement of the Settlement Proceeds; and

(vii) any and all acts, omissions, nondisclosures, facts, matters, transactions, occurrences or representations made or allegedly made in connection with, or directly or indirectly relating to, the Agreement or the settlement of the Texas Lawsuit and the Louisiana Lawsuit.

**b. No Future Assistance by Plaintiffs.** Plaintiffs and Plaintiffs' Affiliates further represent that they will not take any action whatsoever to encourage, assist, or aid any Person in the initiation or prosecution of any causes of action, claims, damages, liabilities, penalties, equitable, legal and administrative relief, interest, demands or rights, whether based on federal, state or local statute, ordinance, regulation, contract, common law or any other source, against Proskauer or any of the Proskauer Affiliates. Nothing set forth in the preceding paragraphs should be construed as a release by or restraint on any criminal, quasi criminal, or administrative proceeding by any agency or branch of government from performing its duties where appropriate. Plaintiffs and plaintiffs' affiliates, however, may respond to any governmental or court subpoena or inquiry.

**c. No Suit on Subsequently Acquired Claims.** Plaintiffs and Plaintiffs' Affiliates, individually and collectively, agree that if they acquire, receive, or gain the right to control any claims or causes of actions of AmCareCo, Inc., (including, but not limited to, through obtaining an ownership interest in AmCareCo, Inc.) or any other claims against Proskauer and that if and when they do acquire, receive, or gain the right to control any such claims or causes of action, and to the extent such claims or causes of action are not released in this paragraph, then Plaintiffs will cause to be executed in favor of Proskauer a full and complete release of those claims and

causes of action that AmCareCo, Inc. or such other third party had or possessed, claimed to have had or possessed, might hold or possess, or claim to hold or possess, arising out of any matter identified in Paragraph 3(a) above and Plaintiffs and Plaintiffs' Affiliates further agree and covenant not to bring suit on any such acquired claims.

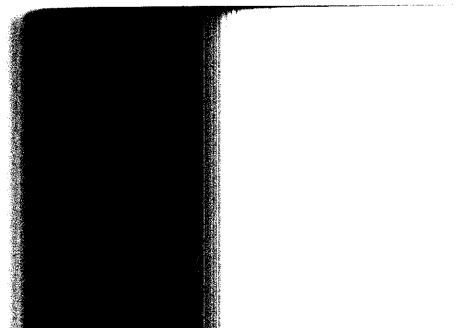
*d. Attorneys' Fees and Expenses.* Without in any way limiting the scope of this Release, this Release covers, without limitation, any and all claims for attorneys' fees, costs or expenses incurred by Plaintiffs or Proskauer or any of the counsel representing Plaintiffs or Proskauer, their Affiliates, or any of them in connection with, or relating in any manner to, the Lawsuits or the settlement of the Lawsuits.

*e. Unknown Claims.* In connection with this Release, Plaintiffs acknowledge that they are aware that they may hereafter discover claims or damage presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the claims released by this Agreement. Nevertheless, it is the intention of Plaintiffs and Proskauer in executing this Agreement to fully, finally, and forever settle and release all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed, whether or not previously or currently asserted in any actions and whether are not known, knowable, or unknown, and which are covered by this Agreement.

*f. Enforcement of the Settlement Agreement.* Nothing in this Release shall preclude any action to enforce the terms of this Agreement.

*g. Essential Term.* Plaintiffs and Proskauer hereby agree and acknowledge that the provisions of this Release constitute an essential term of the Agreement.

*h. No Admission.* Plaintiffs agree that Proskauer does not admit any liability or wrongdoing whatsoever by reason of the matters mentioned herein, liability therefore being specifically denied; that this Agreement is being made purely upon a compromise basis by





Proskauer to rid itself of litigation and to buy peace; and that this Agreement, or the payment pursuant hereto, shall never be used as evidence of liability of Proskauer in any suit or suits, claims, causes of action, or in any public comment.

5. **Approval of Receivership Courts and Dismissal with Prejudice of the Lawsuits.**

This Settlement Agreement is expressly conditioned on approval by the Texas, Oklahoma, and Louisiana receivership courts, pursuant to the statutory and/or common law requirements for approval in each State. The Agreement, even if signed by all Parties, does not become final unless and until the orders approving this Agreement are entered by the three receivership courts. Plaintiffs further agree to promptly notify Proskauer or its counsel of the status of the settlement approval process and of all hearing dates or other significant developments of proceedings affecting the approval of this Agreement.

The Parties agree that each Plaintiff, as appropriate in each of the respective receivership courts and/or the courts in which the Lawsuits are pending, will prepare and file all applications, petitions, pleadings, and/or other documents, and issue any and all required notices and citations, necessary to seek approval of the Agreement in the manner required by the law of each State. Plaintiffs will undertake, in good faith, all actions necessary to comply with each State's due process and other requirements to accomplish a valid approval of the Agreement. In so doing, the Plaintiffs will represent that the terms of this Agreement constitute a fair and reasonable settlement of the claims asserted by the Plaintiffs; that the funds received pursuant to this Agreement will be used by the Plaintiffs to pay approved claims of creditors of the AmCare HMOs, and otherwise used in accordance with procedures utilized in each of the receivership proceedings, as well as for attorneys' fees and related expenses arising out of the pending lawsuits defined herein; that the settlement is intended to resolve all claims against all Proskauer; and that the settlement terms,

under all applicable circumstances, are in the best interests of the creditors and other persons affected by the settlement and the liquidation of the HMOs through the receivership proceedings.

In connection with the settlement approval procedures described herein, Plaintiffs will seek appropriate orders from each respective receivership court for approval of the Agreement and for the court actions described in Section 5 and other provisions of this Agreement. The Plaintiffs agree to advise the respective receivership courts that plaintiffs' position is that: (1) the settlement is fair and equitable to all interested parties and claimants (including all creditors of the AmCareCo HMOs); (2) that Plaintiffs have specific authority to release all claims as provided in paragraph 4 above, and dismiss the Texas Lawsuit and Louisiana Lawsuit with prejudice; (3) Plaintiffs have specific authority to execute this Agreement; and (4) all creditors, claimants, and interested persons to the respective receiverships are bound by the settlement. Plaintiffs shall seek entry of an order to this effect with the respective receivership courts. The entry of such orders with respect to all Plaintiffs and such orders being no longer subject to appeal or further review is a condition to this Settlement Agreement becoming effective.

Upon finality of such approval of the respective receivership courts, the Parties will forthwith file agreed motions for entry of final take nothing judgment in the Texas Lawsuit, ordering that Plaintiffs take nothing by their claims against Proskauer, and dismissing with prejudice against Proskauer the Texas Lawsuit. Plaintiffs will also, at that time, file a motion and order dismissing, with prejudice, Proskauer from the Louisiana Lawsuit. All costs, expenses, and attorneys' fees are to be borne by the party that incurred them in both the Texas and Louisiana lawsuits. Plaintiffs, and their undersigned counsel, will undertake in good faith all actions necessary to obtain forthwith entry of such judgments by such courts. Proskauer and Proskauer's Counsel will cooperate in filing such motions and such request for dismissal and in obtaining entry of such judgments and dismissals. The judgments and dismissals to be entered will be substantially in the

form attached hereto as Exhibits "A" and "B." Upon entry of the aforesaid judgments, the Parties, and their respective counsel, will proceed forthwith in good faith in the Louisiana Lawsuit and the Texas Lawsuit to obtain whatever orders, if any, of the respective courts that may be necessary so that such judgments entered in such cases will become immediately final judgments. If for any reason such dismissals and judgments do not become final, then the Parties agree to file an agreed motion to sever and stay pending final determination of the underlying case or the finalization of the anticipated final judgment disposing of all issues between the Parties hereto.

6. **Delivery of Settlement Proceeds.** Within ten (10) business days of entry by all of the courts of the approvals, judgments, and such orders as may be necessary to make such judgments final, as described in Paragraph 5 above, the Settlement Proceeds described in Paragraph 1 of the Agreement will be submitted in the form of a draft, made payable to Edward J. Walters on behalf of AmCare-LA and AmCare-OK and Joseph J. McKernan on behalf of AmCare-TX and AmCare-Management. The draft will be delivered by certified mail to Moore, Walters, Thompson, Thomas, Papillion & Cullens, 6513 Perkins Road, Baton Rouge, Louisiana, 70808.

7. **Indemnity.** The Plaintiffs, and each of them, agree to indemnify and hold Proskauer harmless (including costs of defense) from and against any claim against any Released Party by any person or entity on whose behalf Plaintiffs, or any of them, purported to bring the Louisiana Lawsuit, or the Texas Lawsuit, that is based upon facts, matters or circumstances alleged, or which could have been alleged, by Plaintiffs, or any of them, in whole or in part, or derivative thereof, in the Louisiana Lawsuit and/or the Texas Lawsuit. Plaintiffs, and each of them, further agree to indemnify and hold Proskauer harmless (including costs of defense) from and against any claims made by anyone acting or claiming by, through, for, or under the Plaintiffs, or any of them, that are based upon facts, matters or circumstances alleged, or which could have been alleged, by Plaintiffs, in whole or in part, or derivative thereof, in the Louisiana Lawsuit and/or the Texas Lawsuit.



If, following the final judgment in favor of plaintiff(s) ("plaintiffs' final judgment"), any third party claimants have contribution and/or indemnity rights according to the law applied, then, if any third party claimant, including but not limited to Health Net, should obtain a judgment ("third party judgment") against Proskauer based on any indemnity or contribution rights such third party claimants may have against Proskauer as a result of the Plaintiffs' final judgment, Plaintiffs shall reduce the Plaintiffs' final judgment against that third party claimant by the amount to which the third party claimant would be entitled to indemnity or contribution from Proskauer.

**8. Representations and Warranties**

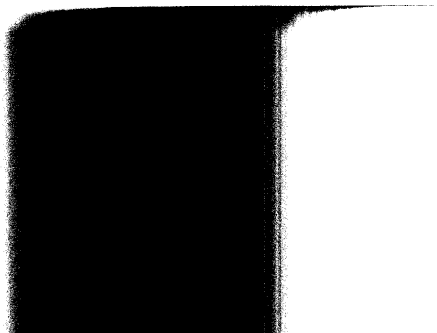
Each Party to this Agreement represents and warrants to the other Parties the following:

a. that such Party is adequately represented by competent counsel in connection with the execution and delivery of this Agreement and in any and all matters relating thereto;

b. that in executing this Agreement, such Party has relied upon such Party's own judgment and the advice of such Party's own attorneys; that such Party has not been induced to sign or execute this Agreement by promises, agreements, or representations not expressly stated herein; and that such Party has freely and willingly executed this Agreement and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other Party or any other Party's attorney prior to the effective date of this Agreement;

c. that such Party's respective consent to this Agreement was not procured, obtained, or induced by improper conduct or undue influence;

d. that after investigation and/or consultation with such Party's attorneys, such Party agrees that this Agreement is fair, reasonable, and supported by good, valid, and adequate consideration;



e. that such Party understands and agrees to the terms and conditions of this Agreement;

f. that each Party is executing this Agreement in all of the representative capacities described in this Agreement, that each Party has the requisite authority and consent to execute this Agreement in all capacities, and that this Agreement is binding upon such Party and its Affiliates; and

g. Plaintiffs specifically represent and warrant that none of the claims released in this Agreement, and no part of such claims, has been assigned, pledged, sold or otherwise transferred to anyone else, and that all claims against Proskauer that have been assigned to Plaintiffs are irrevocably assigned to Plaintiffs.

**9. Choice of Law.** The Parties understand and agree that this Agreement shall be governed by, construed, and enforced in accordance with and subject to the laws of the State of Texas; provided, however, that to the extent this Agreement calls for the dismissal of the Louisiana Lawsuit, it shall be governed by Louisiana law and to the extent this Agreement calls for an entry of a take nothing judgment in the Texas Lawsuit, it shall be governed by Texas law.

**10. Miscellaneous Provisions**

a. All representations, warranties, covenants and other obligations of the Parties under this Agreement shall survive the execution and performance of this Agreement.

b. The Parties hereto have worked closely together in drafting, negotiating, and reviewing this Agreement, and therefore agree that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

c. This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof, and no oral statements or prior written materials not specifically

incorporated herein shall be effective. No variation, modification or changes hereof shall be binding on any Party unless set forth in a document executed by all of the Parties.

d. This Agreement shall be binding upon and shall inure to the benefit of all of the Parties and their respective Affiliates.

e. If it shall become necessary for any of the Parties to employ an attorney or attorneys to enforce his, her, or its rights under this Agreement as the result of the default by any other Party, the prevailing Party shall be reimbursed by the other Party or Parties for all reasonable attorneys' fees, costs, and expenses incurred in connection therewith, any indemnity or release herein notwithstanding.

f. Whenever the context of this Agreement so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. All terms defined in this Agreement shall have such defined meanings when used herein. The paragraph headings used herein are for convenience only and shall not be utilized in construing the intent of this Agreement.

g. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

h. Except as provided herein, the Parties agree to bear and pay whatever costs they themselves incurred in connection with the Lawsuits.

i. The Parties agree to execute such other documents necessary to effectuate the terms of this Agreement.

j. All notices that may or must be given under or in connection with this Agreement shall be sent by facsimile transmission and by courier delivery (via Federal Express, DHL, or some other courier that can make delivery within two business days from the date of sending) to the respective facsimile numbers and addresses listed below, or to such other respective

facsimile number or address as any Party may subsequently designate for himself or itself, by written notice to the other Parties, in accordance herewith:

To Plaintiffs:

\_\_\_\_\_  
\_\_\_\_\_  
Fax No.: \_\_\_\_\_

To Proskauer:

\_\_\_\_\_  
\_\_\_\_\_  
Fax No.: \_\_\_\_\_

With a Copy to:

\_\_\_\_\_  
\_\_\_\_\_  
Fax No.: \_\_\_\_\_

All notices shall be deemed given on the date they are sent.

EXECUTED TO BE EFFECTIVE THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005.

**PLAINTIFFS:**

**Mike Geeslin, Texas Commissioner of Insurance, as Receiver, represented by Jean Johnson, Special Deputy Receiver for AmCare Health Plans of Texas, Inc. and AmCare Management, Inc.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §  
§

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by **Jean Johnson, Special Deputy Receiver for AmCare Health Plans of Texas, Inc. and AmCare Management, Inc.**

\_\_\_\_\_  
Notary Public - State of \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Kim Holland, Insurance Commissioner for the State  
of Oklahoma, as Receiver for AmCare Health Plans  
of Oklahoma, Inc.**

By: \_\_\_\_\_

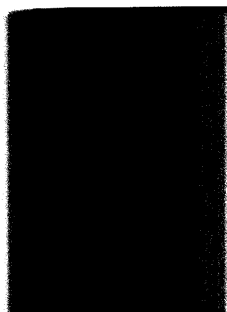
Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OKLAHOMA       §  
                                     §  
COUNTY OF OKLAHOMA   §

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
by **Kim Holland, Insurance Commissioner for the State of Oklahoma, as Receiver for  
AmCare Health Plans of Oklahoma, Inc.**

\_\_\_\_\_  
Notary Public - State of Oklahoma  
Commission Expires: \_\_\_\_\_  
Commission Number: \_\_\_\_\_





**J. Robert Wooley, Commissioner of Insurance for the  
State of Louisiana, as Liquidator of AmCare Health  
Plans of Louisiana, Inc.**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF LOUISIANA       §  
  §  
PARISH OF EAST BATON ROUGE§

          This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
by \_\_\_\_\_ in his capacity as \_\_\_\_\_ for **J. Robert  
Wooley, Commissioner of Insurance for the State of Louisiana, as Liquidator of AmCare  
Health Plans of Louisiana, Inc.**

\_\_\_\_\_  
Notary Public in and for the State of Louisiana

Printed Name: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

Commission Number: \_\_\_\_\_



***DEFENDANTS:***

PROSKAUER ROSE LLP

By: \_\_\_\_\_  
Its: \_\_\_\_\_

This instrument was SUBSCRIBED AND SWORN TO before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
STUART L. ROSOW

This instrument was SUBSCRIBED AND SWORN TO before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2005, by \_\_\_\_\_, to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

Commission Expires: \_\_\_\_\_